

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

BENNY MCCROSKEY,

Petitioner,

v.

ACTION NO. 2:13cv168

HAROLD W. CLARKE, Director,  
Virginia Department of Corrections,

Respondent.

FINAL ORDER

Before the Court is a Petition for a Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 and the Respondent's Motion to Dismiss the Petition. In his Petition, the pro se Petitioner alleges violations of his constitutional rights in relation to his convictions for second-degree murder and grand larceny on February 25, 2011 after he entered Alford pleas to both charges, in the Circuit Court for Spotsylvania County, which resulted in a twenty-five (25) year sentence of active incarceration in the Virginia state penitentiary.

The Petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's Report and Recommendation filed on January 16, 2014 recommends dismissal of

the Petition with prejudice. The parties were advised of their right to file written objections to the Report and Recommendation. On January 31, 2014, the Court received the Petitioner's initial objections, in addition to a motion for discovery and expansion of the record, ECF Nos. 25, 26. On February 6, 2014, the Court received the Petitioner's additional objections, ECF No. 28, with a motion for extension of time to deem those additional objections timely filed, ECF No. 27. The Respondent has not filed a response to the Petitioner's objections, and the time to do so has expired.

The Court, having reviewed the record and examined all of the objections, ECF Nos. 26, 28, filed by the Petitioner to the Report and Recommendation, and having made de novo findings with respect to the portions objected to, does hereby **ADOPT** and **APPROVE** the findings and recommendations set forth in the Report and Recommendation filed January 16, 2014, ECF No. 24. It is, therefore, **ORDERED** that the Respondent's Motion to Dismiss, ECF No. 14, be **GRANTED**, and that the Petition, ECF No. 1, be **DENIED** and **DISMISSED WITH PREJUDICE**. It is further **ORDERED** that judgment be entered in favor of the Respondent. Accordingly, the pending motions, ECF Nos. 25, 27, are **DISMISSED** as moot.

The Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of

appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment.

The Petitioner has failed to demonstrate a substantial showing of the denial of a constitutional right, and therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

The Clerk shall mail a copy of this Final Order to the Petitioner and to counsel of record for the Respondent.

It is so ORDERED.

/s/ MSD  
Mark S. Davis  
United States District Judge

---

MARK S. DAVIS  
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia  
March 19 , 2014